

AMENDED IN ASSEMBLY APRIL 26, 2005

AMENDED IN ASSEMBLY MARCH 16, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 12

Introduced by Assembly Member DeVore

December 6, 2004

An act to amend Sections 5000 and 21350 of, and to add Part 6 (commencing with Section 5800) to Division 5 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as amended, DeVore. Nonprobate transfers: property conveyances upon death.

Existing law authorizes certain types of property to be transferred by a propertyholder to another person without that property being subject to probate proceedings upon the death of the propertyholder. Existing law permits, among other types of nonprobate transfers, transfers on death of an insurance policy, bond, pension plan, specified trust and other financial accounts, and property held in joint tenancy.

This bill would ~~establish a method for conveying real property through a nonprobate transfer, by means of a new form of deed, known as a beneficiary deed. The bill would specify that, in addition to any method allowed by law, title to an interest in real property may be transferred to a grantee beneficiary on the death of the owner by recording, prior to the owner's death, a beneficiary deed signed by the owner of the property interest designating a grantee beneficiary of the interest.~~

~~The bill would define beneficiary deed and other terms, for purposes of those provisions, and would specify the requirements for recording~~

~~and revoking a beneficiary deed. The bill would authorize a property owner to execute a beneficiary deed designating multiple grantee beneficiaries and successor grantee beneficiaries. The bill would specify the conditions by which real property subject to a beneficiary deed and owned as joint tenants or as community property passes by law upon the death of the property owner. The bill would additionally require the executor or administrator of an owner's estate to submit a copy of the owner's death certificate to the county recorder for recordation and to send a notice of the owner's death and the existence of a beneficiary deed to each of the proposed grantees, and would establish timeframes and procedures governing the process by which proposed grantees may accept or reject the property provide that a record owner may create an interest in real property in a transfer on death form by executing, acknowledging, and recording a deed, written in substantially a specified manner, and designating a grantee beneficiary or beneficiaries of the interest, and the interest in the property would then transfer on the death of the owner. The bill would permit the owner to revoke or change this designation, as specified. Among other things, the bill would provide that a transfer on death deed would not be revoked by a will and would not affect a joint tenancy in real property, as specified. Grantee beneficiaries of a transfer on death deed would take the owner's interest in the real property at death subject to various encumbrances on the property, and the beneficiaries' interests in the property would be subject to claims upon the estate, as specified. If a grantee beneficiary dies before the death of the owner, and an alternative beneficiary has not been designated on the deed, the transfer would lapse. The bill would also make conforming changes to existing law regarding nonprobate transfers and other donative transfers.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5000 of the Probate Code is amended to
2 read:
3 5000. (a) A provision for a nonprobate transfer on death in
4 an insurance policy, contract of employment, bond, mortgage,
5 promissory note, certificated or uncertificated security, account
6 agreement, custodial agreement, deposit agreement,

1 compensation plan, pension plan, individual retirement plan,
2 employee benefit plan, trust, conveyance, deed of gift,
3 beneficiary deed, marital property agreement, or other written
4 instrument of a similar nature is not invalid because the
5 instrument does not comply with the requirements for execution
6 of a will, and this code does not invalidate the instrument.

7 (b) Included within subdivision (a) are the following:

8 (1) A written provision that money or other benefits due to,
9 controlled by, or owned by a decedent before death shall be paid
10 after the decedent's death to a person whom the decedent
11 designates either in the instrument or in a separate writing,
12 including a will, executed either before or at the same time as the
13 instrument, or later.

14 (2) A written provision that money due or to become due
15 under the instrument shall cease to be payable in event of the
16 death of the promisee or the promisor before payment or demand.

17 (3) A written provision that any property controlled by or
18 owned by the decedent before death that is the subject of the
19 instrument shall pass to a person whom the decedent designates
20 either in the instrument or in a separate writing, including a will,
21 executed either before or at the same time as the instrument, or
22 later.

23 (c) Nothing in this section limits the rights of creditors under
24 any other law.

25 SEC. 2. Part 6 (commencing with Section 5800) is added to
26 Division 5 of the Probate Code, to read:

27
28 PART 6. BENEFICIARY DEEDS
29

30 5800. ~~As used in this part:~~

31 ~~(a) "Beneficiary deed" means a deed that conveys an interest~~
32 ~~in real property, including any debt secured by a lien on real~~
33 ~~property, to a grantee beneficiary designated by the owner and~~
34 ~~that expressly states that the deed is effective on the death of the~~
35 ~~owner, transfers all interest to the designated grantee beneficiary~~
36 ~~subject to all assignments, contracts, mortgages, deeds of trust,~~
37 ~~liens, security pledges, and other encumbrances to which the~~
38 ~~owner was subject during the owner's lifetime.~~

39 ~~(b) "Deed" means any instrument of conveyance of real~~
40 ~~property.~~

1 ~~(e) “Grantee beneficiary” means one or more persons or~~
2 ~~entities capable of holding title to real property designated in a~~
3 ~~beneficiary deed to receive an interest in real property upon the~~
4 ~~death of the owner. “Grantee beneficiary” includes, but is not~~
5 ~~limited to, a successor grantee beneficiary.~~

6 ~~(d) “Owner” means the grantor of a beneficiary deed.~~

7 ~~(e) “Successor grantee beneficiary” means the person or entity~~
8 ~~designated in a beneficiary deed to receive an interest in the~~
9 ~~property if the primary grantee beneficiary does not survive the~~
10 ~~owner.~~

11 ~~5801. (a) In addition to any method allowed by law, title to an~~
12 ~~interest in real property may be transferred on the death of the~~
13 ~~owner by recording, prior to the owner’s death, a beneficiary~~
14 ~~deed signed by the owner of the property interest, as grantor,~~
15 ~~designating a grantee beneficiary of the interest. The grantee~~
16 ~~beneficiary shall take title to the owner’s interest subject to all~~
17 ~~conveyances, encumbrances, assignments, contracts, mortgages,~~
18 ~~liens, and other interests affecting title to the property, whether~~
19 ~~created before or after the recording of the beneficiary deed, and~~
20 ~~to which the owner was subject to during the owner’s lifetime.~~
21 ~~Upon the death of the owner, the property shall be subject to the~~
22 ~~claims of the creditors of the owner’s estate and to the expenses~~
23 ~~of administration of the estate to the extent the owner’s estate is~~
24 ~~otherwise inadequate to satisfy those claims and expenses.~~

25 ~~(b) The transfer by a beneficiary deed shall be effective only~~
26 ~~upon the death of the owner, at which time title to the property~~
27 ~~interest shall vest in the designated grantee beneficiary, unless~~
28 ~~the designated grantee beneficiary rejects the proposed grant~~
29 ~~pursuant to subdivision (g) of Section 5803. A beneficiary deed~~
30 ~~does not need to be supported by consideration.~~

31 ~~(c) A beneficiary deed may designate multiple grantees who~~
32 ~~take title as joint tenants with right of survivorship, tenants in~~
33 ~~common, a husband and wife as community property or as~~
34 ~~community property with right of survivorship, or any other~~
35 ~~tenancy permissible by law.~~

36 ~~(d) A beneficiary deed may designate a successor grantee~~
37 ~~beneficiary. If the beneficiary deed designates a successor~~
38 ~~grantee beneficiary, the deed shall state the condition on which~~
39 ~~the interest of the successor grantee would vest.~~

1 5802. ~~(a) If real property is owned as joint tenants with the~~
2 ~~right of survivorship or as community property with the right of~~
3 ~~survivorship, a beneficiary deed that conveys an interest in the~~
4 ~~real property to a grantee beneficiary designated by all of the~~
5 ~~then surviving owners and that expressly states that the deed is~~
6 ~~effective on the death of the last surviving owner, transfers the~~
7 ~~interest to the designated grantee beneficiary effective on the~~
8 ~~death of the last surviving owner.~~

9 ~~(b) If a beneficiary deed is executed by fewer than all of the~~
10 ~~owners of real property owned as joint tenants with right of~~
11 ~~survivorship or community property with right of survivorship,~~
12 ~~the beneficiary deed is valid if the last surviving owner is one of~~
13 ~~the persons who executes the beneficiary deed. If the last~~
14 ~~surviving owner did not execute the beneficiary deed, the transfer~~
15 ~~shall lapse and the deed is void.~~

16 ~~(c) An estate in joint tenancy with right of survivorship or~~
17 ~~community property with right of survivorship is not affected by~~
18 ~~the execution of a beneficiary deed that is executed by fewer than~~
19 ~~all of the owners of the real property and the rights of a surviving~~
20 ~~joint tenant with right of survivorship or a surviving spouse in~~
21 ~~community property with right of survivorship shall prevail over~~
22 ~~a grantee beneficiary named in a beneficiary deed.~~

23 5803. ~~(a) A beneficiary deed is valid only if it is executed~~
24 ~~and recorded as provided by law in the office of the county~~
25 ~~recorder of the county in which the property is located before the~~
26 ~~death of the owner or the last surviving owner.~~

27 ~~(b) A beneficiary deed may be used to transfer an interest in~~
28 ~~real property to the trustee of a trust even if the trust is revocable.~~

29 ~~(c) A beneficiary deed may be revoked at any time by the~~
30 ~~owner, or, if there is more than one owner, by any of the owners~~
31 ~~who executed the beneficiary deed. To be effective, the~~
32 ~~revocation must be executed and recorded as provided by law in~~
33 ~~the office of the county recorder of the county in which the real~~
34 ~~property is located before the death of the owner who executes~~
35 ~~the revocation. If the real property is owned as joint tenants with~~
36 ~~right of survivorship or community property with right of~~
37 ~~survivorship and if the revocation is not executed by all of the~~
38 ~~owners, the revocation is not effective unless executed by the last~~
39 ~~surviving owner.~~

1 ~~(d) If an owner executes and records more than one~~
2 ~~beneficiary deed concerning the same real property, the last~~
3 ~~beneficiary deed that is recorded before the owner's death is the~~
4 ~~effective beneficiary deed.~~

5 ~~(e) A beneficiary deed that is executed and recorded in~~
6 ~~accordance with this part is not revoked, altered, or amended by~~
7 ~~the provisions of a will of the owner.~~

8 ~~(f) The signature, consent, or notice to a grantee beneficiary of~~
9 ~~a beneficiary deed is not required for any purpose during the~~
10 ~~lifetime of the owner.~~

11 ~~(g) Within 30 days of an owner's death, the executor or~~
12 ~~administrator of the owner's estate shall submit a copy of,~~
13 ~~owner's death certificate to the county recorder for recordation~~
14 ~~and shall send a notice of, owner's death and the existence of the~~
15 ~~beneficiary deed to each of the proposed grantees by mail, return~~
16 ~~receipt requested. Upon receipt of the notice, the proposed~~
17 ~~grantees shall have 60 days to accept or reject the proposed grant~~
18 ~~by written, notarized notice to the executor or administrator.~~
19 ~~Upon receipt of written notice by a proposed grantee accepting or~~
20 ~~rejecting the proposed grant of property, the executor or~~
21 ~~administrator shall have 30 days within which to submit to the~~
22 ~~county recorder a certificate of acceptance or rejection of the~~
23 ~~property by the proposed grantee. If a proposed grantee fails to~~
24 ~~accept or reject the proposed grant of property within the 60-day~~
25 ~~period, the property to which the proposed grantee would have~~
26 ~~been entitled shall instead pass as a part of the owner's estate.~~

27 ~~(h) A deed, which is effective by law to convey title to the~~
28 ~~interests and estates in the deed and which is not recorded until~~
29 ~~after the death of the owner, is not invalidated by this part.~~

1 5804. (a) ~~A beneficiary deed is sufficient if it complies with~~
2 ~~all other applicable laws and if it is in substantially the following~~
3 ~~form:~~

4
5 BENEFICIARY DEED

6 -
7 I, (We,) _____, hereby convey to _____ -
8 - (Owner) - - (Grantee beneficiary) -

9 effective on my (our) death the following described real property: -
10 - -

11 (Legal description)
12 -
13 -

14 Dated: _____ -
15

16 (Signature of grantor(s)) _____ -
17 -
18 _____
19 -

20 (Acknowledgement by notary) -
21 -
22 -

23 CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH
24 OF THE GRANTOR IN ORDER TO BE EFFECTIVE. THIS
25 BENEFICIARY DEED IS REVOCABLE. IT DOES NOT TRANSFER
26 ANY OWNERSHIP UNTIL THE DEATH OF THE GRANTOR. IT
27 REVOKES ALL PRIOR BENEFICIARY DEEDS BY THIS GRANTOR
28 FOR THIS REAL PROPERTY EVEN IF THIS BENEFICIARY DEED
29 FAILS TO CONVEY ALL OF THE GRANTOR'S INTEREST IN THIS
30 REAL PROPERTY.

31
32 (b) ~~The instrument of revocation of a beneficiary deed is~~
33 ~~sufficient if it complies with all other applicable laws and is in~~
34 ~~substantially the following form:~~
35

1 ~~REVOCATION OF BENEFICIARY DEED~~

2 -
 3 -
 4 ~~The undersigned hereby revokes the beneficiary deed recorded on~~
 5 ~~- _____, in docket or book _____, at page _____, or instrument~~
 6 ~~_____ (Date) _____~~

7 -
 8 ~~number _____, records of _____ County, California.~~
 9 -

10 -
 11 ~~Dated: _____~~ -
 12 -

13 -
 14 ~~(Signature) _____~~ -
 15 -

16 -
 17 ~~(Acknowledgement by notary)~~ -
 18 -

19 *(a) An interest in real property may be titled in transfer on*
 20 *death form by recording a deed signed and acknowledged by the*
 21 *record owner of the interest and designating a grantee*
 22 *beneficiary or beneficiaries of the interest. The deed transfers*
 23 *ownership of that interest upon the death of the owner. A transfer*
 24 *on death deed does not require support by consideration.*

25 *(b) The signature, consent, agreement of, or notice to, a*
 26 *grantee beneficiary of a transfer on death deed is not required*
 27 *for any purpose during the lifetime of the record owner.*

28 *(c) An interest in real property is titled in transfer on death*
 29 *form by executing, acknowledging, and recording in the office of*
 30 *the county recorder in the county where the real property is*
 31 *located, prior to the death of the owner, a deed in substantially*
 32 *the following form:*

“TRANSFER ON DEATH DEED

_____ as owner transfers on death to
Name of owner

_____, as grantee beneficiary, the
Name of beneficiary

following described interest in real property. THIS TRANSFER ON DEATH
DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY OWNERSHIP
UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR
BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST
IN REAL PROPERTY.

(descriptions)

Witness _____ hand _____ and _____
(seal)

this _____ day of 20 ____

(Seal)

(Here add acknowledgements)”

(d) A designation of the grantee beneficiary may be revoked by
the record owner at any time prior to the death of the record
owner, by the record owner executing, acknowledging, and
recording in the office of the recorder in the county where the
real property is located an instrument describing the interest and
revoking the designation. The signature, consent, agreement of,
or notice to, the grantee beneficiary or beneficiaries is not
required.

(e) A designation of the grantee beneficiary may be changed
by the record owner at any time prior to the death of the record
owner, by the record owner executing, acknowledging, and
recording a subsequent transfer on death deed. The signature,
consent, agreement of, or notice to, the grantee beneficiary or
beneficiaries is not required. A subsequent transfer on death
beneficiary designation revokes a prior designation to the extent
there is a conflict between the two designations.

1 (f) A transfer on death deed executed, acknowledged, and
2 recorded in accordance with this section is not revoked by the
3 provisions of a will.

4 (g) A joint tenancy in real property is not affected by a
5 transfer on death deed, and the rights of a surviving joint tenant
6 shall prevail over a grantee beneficiary named in a transfer on
7 death deed. If a joint tenant has executed a transfer on death
8 deed, and if that joint tenant is the last surviving joint tenant,
9 then the transfer on death deed is effective on that joint tenant's
10 death.

11 (h) Title to the interest in real property recorded in transfer on
12 death form shall vest in the designated grantee beneficiary or
13 beneficiaries on the death of the record owner.

14 (i) Grantee beneficiaries of a transfer on death deed take the
15 record owner's interest in the real estate at death subject to all
16 conveyances, assignments, contracts, mortgages, liens, and
17 security pledges made by the record owner, or to which the
18 record owner was subject during the record owner's lifetime,
19 and to any interest conveyed by the record owner that is less than
20 all of the record owner's interest in the property.

21 (j) If the assets of the estate are insufficient, a transfer
22 resulting from a transfer on death deed is not effective against
23 the estate of a deceased party to the extent needed to pay any
24 claims against the estate and the statutory allowances to the
25 surviving spouse and children.

26 (k) If a grantee beneficiary dies prior to the death of the
27 record owner and an alternative grantee beneficiary has not
28 been designated on the deed, the transfer shall lapse.

29 SEC. 3. Section 21350 of the Probate Code is amended to
30 read:

31 21350. (a) Except as provided in Section 21351, no
32 provision, or provisions, of any instrument, including a
33 beneficiary deed, as set forth in Part 6 (commencing with Section
34 5800) of Division 5, shall be valid to make any donative transfer
35 to any of the following:

36 (1) The person who drafted the instrument.

37 (2) A person who is related by blood or marriage to, is a
38 domestic partner of, is a cohabitant with, or is an employee of,
39 the person who drafted the instrument.

1 (3) Any partner or shareholder of any law partnership or law
2 corporation in which the person described in paragraph (1) has an
3 ownership interest, and any employee of that law partnership or
4 law corporation.

5 (4) Any person who has a fiduciary relationship with the
6 transferor, including, but not limited to, a conservator or trustee,
7 who transcribes the instrument or causes it to be transcribed.

8 (5) A person who is related by blood or marriage to, is a
9 domestic partner of, is a cohabitant with, or is an employee of a
10 person who is described in paragraph (4).

11 (6) A care custodian of a dependent adult who is the
12 transferor.

13 (7) A person who is related by blood or marriage to, is a
14 domestic partner of, is a cohabitant with, or is an employee of, a
15 person who is described in paragraph (6).

16 (b) For purposes of this section, “a person who is related by
17 blood or marriage” to a person means all of the following:

18 (1) The person’s spouse or predeceased spouse.

19 (2) Relatives within the third degree of the person and of the
20 person’s spouse.

21 (3) The spouse of any person described in paragraph (2).

22 In determining any relationship under this subdivision,
23 Sections 6406, 6407, and Chapter 2 (commencing with Section
24 6450) of Part 2 of Division 6 shall be applicable.

25 (c) For purposes of this section, the term “dependent adult”
26 has the meaning as set forth in Section 15610.23 of the Welfare
27 and Institutions Code and also includes those persons who (1) are
28 older than age 64 and (2) would be dependent adults, within the
29 meaning of Section 15610.23, if they were between the ages of
30 18 and 64. The term “care custodian” has the meaning as set
31 forth in Section 15610.17 of the Welfare and Institutions Code.

32 (d) For purposes of this section, “domestic partner” means a
33 domestic partner as defined under Section 297 of the Family
34 Code.